IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 5972 of 2007()

CRIME NO. 653/07 OF KOYILANDY POLICE STATION

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PETITIONER/ACCUSED

SHIJU, AGED 35 YEARS, S/O.KORAPPAN,
MALAYIL HOUSE, CHELIYA, KOYILANDY.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS: COMPLAINANT

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE,
KOYILANDY POLICE STATION, REPRESENETED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5972 of 2007

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Dated this the 4th day of October, 2007

O R D E R

Application anticipatory bail. The petitioner faces allegations of having committed offences punishable under Sections 452 and 354 I.P.C. The gravamen of the allegations against the petitioner is that he entered into the house of the defacto complainant with an intention to commit the offence. After entering the house, he allegedly demanded that the victim, a woman, must consent to sexual intercourse with him. The woman resisted. She ran out of the house seeking assistance and support. A neighbour came to the rescue of the defacto complainant. When she, along with the neighbour, came to her house, the petitioner was not available in the house. The son of the defacto complainant, a boy aged 16 years, was available in the house at the relevant time. The alleged incident took place after midnight. The F.I.R. is seen registered at 7.30 a.m. Detailed narration of the incident is available in the F.I.R. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He attempts to build up a case that some non-specified relatives of the victim had assaulted the petitioner earlier on that day. Apprehending that the petitioner might make allegations against them, as a counter blast and to bail themselves out of the consequences of their culpable acts, false complaint was filed by the defacto complainant. The learned counsel strenuously argues that certain improbabilities, which he urges, are available in the case. It is very unlikely that a woman, whose husband is not available, would have opened the door in the night without and before waking up her son. It is extremely improbable that she would have run out of the house when her son was available in the house. All these alleged improbabilities, the learned counsel argues, are inherently improbable and unacceptable. The petitioner may not be left to endure the trauma of arrest and incarceration on the basis of such improbable and artificial allegations. Anticipatory bail may, in these circumstances, be granted to the petitioner, it is prayed.

3. The learned prosecutor opposes the application. He submits that the theories advanced are artificial. No allegation whatsoever of any prior incident against the defacto complainant or her relatives has ever been

made. The fact that the child of the defacto complainant, a boy aged about 16 years, was sleeping in the house and he did not wake up cannot be a reason to contend that the incident had not taken place. That an unsuspecting woman, aged about 42 years, opened the doors when she heard knocks at the door cannot also be reckoned as destroying the foundation of the allegations made by her against the petitioner. In these circumstances the extra ordinary equitable discretion under Section 438 Cr.P.C. may not be invoked in favour of the petitioner. He may be directed to appear before the Investigating Officer or the learned Magistrate and then seek regular bail, submits the learned Prosecutor.

4. In the nature of the contentions raised, the learned Prosecutor was directed to place the case diary for my perusal. I have perused the case diary. Having considered all the relevant inputs, I am certainly persuaded to agree with the learned Prosecutor. I find force in the opposition by the Prosecutor. I am of the opinion that there are no features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner, submits the Prosecutor.

4. I have considered all the relevant inputs. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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